

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	/	US EPA Docket No.
	/	FIFRA 02-2005-5301
Martex Farms, S.E.	/	
Rd. No. 1, Km. 96.2	/	
Santa Isabel, Puerto Rico 00757	/	First Amended Complaint and
	/	Notice of Opportunity for Hearing
	/	
Respondent	/	Proceeding under Section 14(a) of
	/	the Federal Insecticide, Fungicide
	/	and Rodenticide Act ("FIFRA"), as
	/	amended, 7 U.S.C. §136l(a).
//		

**ANSWER TO THE FIRST AMENDED COMPLAINT**

TO THE PRESIDING OFFICER:

COMES NOW respondent Martex Farms, S.E. through undersigned counsel and, as ordered by the Hon. Susan L. Biro on July 14, 2005, notified to counsel on July 25, 2005, answers EPA's First Amended Complaint and Notice of Opportunity for Hearing:

**I. INTRODUCTION**

1. Being an issue of law, an answer is not required. It is admitted that Martex Farms, S.E. is the correct name of the Respondent.
2. Being an issue of law, an answer is not required.
3. As stated in paragraph 3 of the complaint, EPA's allegations as to violations are denied.

## **II. COMPLAINT**

### **Finding of Facts and Conclusions of Law**

4. It is admitted.

5. Being an issue of law, an answer is not required.

6. As stated in paragraph 6 of the complaint, EPA's allegations are denied.

Respondent operated a farm known as "Jauca facility", for the production of fruits and ornamental plants. (a d. record)

7. As stated in paragraph 7 of the complaint, EPA's allegations are denied. At this facility, Respondent operated a fruit-packing house, a motor pool and a warehouse.

8. As stated in paragraph 8 of the complaint, EPA's allegations are denied. At this facility, Respondent operated an agricultural concern known as Finca Paso Seco.

9. It is admitted.

10. Being an issue of law, an answer is not required.

11. Being an issue of law, an answer is not required.

12. Being an issue of law, an answer is not required.

13. Being an issue of law, an answer is not required.

14. Being an issue of law, an answer is not required.

15. It is admitted.

16. Being an issue of law, an answer is not required.

17. Being an issue of law, an answer is not required.

18. It is admitted.

19. Being an issue of law, an answer is not required.

20. Being an issue of law, an answer is not required.

21. Being an issue of law, an answer is not required.

22. It is admitted that the inspection of August 20, 2003, was held, the rest is denied.

23. It is admitted that the inspector issued a Notice of Warning to Respondent of September 26, 2003 (notice regarding to the Coto Laurel visit of August 20, 2003.) Respondent affirmatively alleges that upon receipt of said Notice of Warning, all corrective measures were immediately taken, therefore adequately serving the public interest and the ultimate purpose of the law. Also, see answer to paragraph 29, below.

24. It is admitted that the inspection of September 5, 2003, was held, the rest is denied.

25. It is admitted that the inspector issued a Notice of Warning to Respondent on October 6, 2003 (notice regarding the Sept 5, 2003, visit to viveros in Paso Seco). Respondent affirmatively alleges that upon receipt of said Notice of Warning, all corrective measures were immediately taken, therefore adequately serving the public interest and the ultimate purpose of the law. Due to high personnel turnover, some agricultural workers had not taken the WPS training course on Sept 5, 2003. As soon as copies of the WPS training videos were received from the P.R. Department of Agriculture, Respondent immediately implemented a temporary training program to be substituted by a more complete WPS training (card issued by EPA.) Also, see answer to paragraph 29, below.

26. It is admitted that the inspection of September 5, 2003, was held, the rest is denied.

27. It is admitted that PRDA issued a Notice of Warning to Respondent on October 29, 2003 (notice regarding the Sept 5, 2003 visit to Rio Canas). Respondent affirmatively alleges that upon receipt of said Notice of Warning, all corrective measures were immediately taken, therefore adequately serving the public interest and the ultimate purpose of the law. Also, see answer to paragraph 29, below.

28. It is admitted that the inspection of September 5, 2003, was held, the rest is denied.

29. It is admitted that PRDA issued a Notice of Warning to Respondent on October 30, 2003 (notice regarding the Sept 5, 2003 visit to Jauca). Respondent affirmatively alleges that upon receipt of said Notice of Warning, all corrective measures were immediately taken, therefore adequately serving the public interest and the ultimate purpose of the law. Also, see affirmative defense number 12: The agency has discretion to pursue different courses of action taking into account that no violations were reported following the March 24, 2003 PRDA-EPA inspection of the Jauca facility, and that there is no evidence that Respondent has caused harm to health or the environment. Section 14(a)(4) of FIFRA states that EPA may choose to issue a Notice of Violation in lieu of a civil penalty if the agency determines that the violation occurred despite the exercise of due care or the violation did not cause significant harm to health or the environment. Section 9(c)(3) also permits the EPA to issue a written Notice of Warning in lieu of instituting a proceeding for minor



violations of FIFRA if the Administrator believes that the public interest will be adequately served through this course of action.

30. It is admitted that the inspection of April 26, 2004, was held, the rest is denied.

31. Being an issue of law, an answer is not required.

32. Being an issue of law, an answer is not required.

33. Being an issue of law, an answer is not required.

34. Being an issue of law, an answer is not required.

35. Being an issue of law, an answer is not required.

36. Being an issue of law, an answer is not required.

37. Being an issue of law, an answer is not required.

38. Being an issue of law, an answer is not required.

39. Being an issue of law, an answer is not required.

40. Being an issue of law, an answer is not required.

41. Being an issue of law, an answer is not required.

42. Being an issue of law, an answer is not required.

43. It is admitted, subject to the rest of quoted paragraph.

44. It is admitted, subject to the rest of quoted paragraph.

45. Being an issue of law, an answer is not required.

46. Being an issue of law, an answer is not required.

47. Being an issue of law, an answer is not required.

48. Being an issue of law, an answer is not required.

49. It is admitted that the inspection of April 26, 2004, was held, the rest is denied. It is affirmatively alleged that Respondent's agronomist was handed the Coto Laurel visit report and was required to sign it. The document had been drafted in English by the inspector. Not only Mr. Alvaro Acosta's English is poor, to say the least, he did not attend EPA's Coto Laurel farm inspection of April 26, 2004.

50. It is denied. Respondent affirmatively alleges that nothing was sprayed in Coto Laurel on such date and that there was no need for this category of personnel at the site.

51. Being an issue of law, an answer is not required.

52. Being an issue of law, an answer is not required. Alternatively, it is denied.

53. Being an issue of law, an answer is not required. Alternatively, it is denied.

#### **COUNTS 1-151**

##### **FAILURE TO NOTIFY WORKERS OF PESTICIDE APPLICATIONS**

54. It is admitted, subject to test of materiality and noted exceptions.

55. As stated in paragraph 55 of the complaint, EPA's allegations are denied. Respondent affirmatively alleges that statements attributed to Mr. Alvaro Acosta have been taken out of context. His obligations do not include reporting pesticide applications nor the preparation and posting of WPS reports at the central information center. Respondent further alleges, as clearly stated to inspector, that all applications of pesticide (herbicides included) are indeed documented, which suggests that inspector confused issues since herbicides (vis-a-vis other pesticides) are applied, supervised, documented and reported by diverse company employees.

56. As stated in paragraph 56 of the complaint, EPA's allegations are denied. The Respondent gave to the PRDA-EPA Inspectors all the information they requested, being their duty to thoroughly review the data so that a well pleaded complaint could be submitted for adjudication.

The raw data given to the inspectors was erroneously reviewed and the EPA had to submit a "Motion for Leave to File First Amended Complaint" to amend the Complaint due to alleged "technical errors." Additionally, also resulting from the inspector's confusion and misrepresentation of data provided by the Respondent, the Complainant had to remove Application No. 10 from the tables presented in Paragraphs 56 and 71 of the Complaint (and the two counts associated therewith, as reflected in Paragraphs 59 and 74) because it had incorrectly identified Field JC-41 a mango field in which the pesticide "Clear Out 41 Plus" had been applied on March 29, 2004.

However, a considerable number of applications of the pesticide "Clear Out 41 Plus" on different dates --forty one to be precise-- have been erroneously kept by the EPA in the tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as the eighty two counts associated therewith reflected in Paragraphs 59 and 74, as follows: Twenty nine (29) applications of pesticides on fields that are not part of the Jauca facility; six (6) applications of pesticides along fences or property limits; three (3) applications of pesticides in workshops; and three (3) applications of pesticides in nurseries. PRDA-EPA personnel should again review the data provided by the Respondent updating the Complainant's Exhibit No. 21b, to remove the above

applications and all counts associated therewith as reflected in Paragraphs 59 and 74 of the Amended Complaint.

Also, over fifty (50) applications of the pesticide “Clear Out 41 Plus” have been duplicated and included in the same tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as their corresponding counts associated therewith reflected in Paragraphs 59 and 74. Consequently, all of EPA’s allegation included in this complaint are flawed, and the proposed civil penalties should be denied.

### APPLICATION TABLE

App #	Date of Application	Field Name/Crop	Comments
1	March 29, 2004	MJF-04G/Banana*	Ok
2	March 29, 2004	TX-52G/Banana*	Ok
3	March 29, 2004	MJF-04G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 1)
4	March 29, 2004	MJF-04G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 1 and 3)
5	March 29, 2004	TX-52G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 2)
6	March 29, 2004	TX-41	Ok (CORRECTED previously misidentified as JC-41/Mango)
7	March 29, 2004	TX-31/Mango	Ok
8	March 29, 2004	TX-32/Mango	Ok
9	March 29, 2004	TX-52G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 2 and 5)
10	March 30, 2004	ON-41P/Palms*	Ok
11	March 30, 2004	JC-41/Mango	Ok
12	March 30, 2004	ON-41P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 10)
13	March 30, 2004	JC-42/Mango	Ok
14	March 30, 2004	ON-41P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 10 and 12)
15	March 31, 2004	JC-22/Mango	Ok
16	March 31, 2004	D501/Mango	<b>There is no field named D501 in the Jauca farm</b>
17	March 31, 2004	JC-11/Mango	Ok
18	March 31, 2004	ON-42P/Palms*	Ok
19	March 31, 2004	ON-42P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 18)
20	March 31, 2004	ON-43P/Palms*	Ok
21	March 31, 2004	ON-43P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 20)
22	March 31, 2004	D601/Mango	<b>There is no field named D601 in the Jauca farm</b>
23	March 31, 2004	JC-21/Mango	Ok
24	April 1, 2004	D701/Mango	<b>There is no field named D701 in the Jauca farm</b>
25	April 1, 2004	JC-12P/Palms*	Ok
26	April 1, 2004	D601/Mango	<b>There is no field named D601 in the Jauca farm</b>



72	April 7, 2004	OS-17P/Palms*	Ok
73	April 7, 2004	OS-17P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 72)
74	April 7, 2004	ON-72A/Avocado	Ok
75	April 7, 2004	OS-33H/Plantains*	COUNT HAS BEEN DUPLICATED (SEE 70)
76	April 7, 2004	ON-82A/Avocado	Ok
77	April 7, 2004	TX-53G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 71)
78	April 7, 2004	R013/Mango	<b>There is no field named R013 in the Jauca farm</b>
79	April 7, 2004	R011/Mango	<b>There is no field named R011 in the Jauca farm</b>
80	April 7, 2004	DSPR/Mango	<b>There is no field named DSPR in the Jauca farm</b>
81	April 8, 2004	DSPR/Mango	<b>There is no field named DSPR in the Jauca farm</b>
82	April 12, 2004	ON-82A/Avocado	Ok
83	April 12, 2004	ON-21A/Avocado	Ok
84	April 12, 2004	ON-32A/Avocado	Ok
85	April 12, 2004	DSPR/Mango	<b>There is no field named DSPR in the Jauca farm</b>
86	April 13, 2004	ON-21A/Avocado	Ok
87	April 13, 2004	ON-31A/Avocado	Ok
88	April 13, 2004	ON-22A/Avocado	Ok
89	April 13, 2004	D001/Mango	<b>There is no field named D001 in the Jauca farm</b>
90	April 13, 2004	MJF-09P/Palms*	Ok
91	April 13, 2004	MJF09P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 90)
92	April 13, 2004	MJF09P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 90 and 91)
93	April 14, 2004	D001/Mango	<b>There is no field named D001 in the Jauca farm</b>
94	April 14, 2004	MJF-09P/Palms*	Ok
95	April 14, 2004	OS-25H/Plantains*	Ok
96	April 14, 2004	OS-25H/Plantains*	COUNT HAS BEEN DUPLICATED (SEE 95)
97	April 14, 2004	MJF-09P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 94)
98	April 14, 2004	R401/Mango	<b>There is no field named R401 in the Jauca farm</b>
99	April 14, 2004	OE-22G/Banana*	Ok
100	April 14, 2004	OE-22G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 99)
101	April 14, 2004	MJF-09P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 94 and 97)
102	April 14, 2004	OE-22G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 99 and 100)
103	April 15, 2004	OE-22G/Banana*	Ok
104	April 15, 2004	OE-22G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 103)
105	April 15, 2004	Verjas/Crop Not Listed	<b>This is not a fruit field, is a fence</b>
106	April 15, 2004	Verjas/Crop Not Listed	<b>This is not a fruit field, is a fence</b>
107	April 15, 2004	OE-22G/Banana*	COUNT HAS BEEN DUPLICATED SEE 103 and 104)
108	April 15, 2004	D201/Mango	<b>There is no field named D201 in the Jauca farm</b>
109	April 15, 2004	R403/Mango	<b>There is no field named R403 in the Jauca farm</b>
110	April 15, 2004	Verjas/Crop Not Listed	<b>This is not a fruit field, is a fence</b>
111	April 16, 2004	OE-21G/Banana*	Ok
112	April 16, 2004	MJF-04G/Banana*	Ok
113	April 16, 2004	OE-21G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 111)
114	April 16, 2004	MJF-04G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 112)
115	April 16, 2004	OE-21G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 111 and 113)
116	April 16, 2004	MJF-04G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 112 and 114)

117	April 16, 2004	R405/Mango	There is no field named R405 in the Jauca farm
118	April 19, 2004	R108/Mango	There is no field named R108 in the Jauca farm
119	April 19, 2004	ON-09A/Avocado	Ok
120	April 19, 2004	MJF-03G/Banana*	Ok
121	April 19, 2004	D401/Mango	There is no field named D401 in the Jauca farm
122	April 19, 2004	MJF-03G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 120)
123	April 19, 2004	MJF-03G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 120 and 122)
124	April 19, 2004	ON-09A/Avocado*	COUNT HAS BEEN DUPLICATED (SEE 119)
125	April 20, 2004	D601/Mango	There is no field named D601 in the Jauca farm
126	April 20, 2004	R104/Mango	There is no field named R104 in the Jauca farm
127	April 20, 2004	ON-41P/Palms*	Ok
128	April 20, 2004	MJF-03G/Banana*	Ok
129	April 20, 2004	ON-41P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 127)
130	April 20, 2004	ON-41P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 127 and 129)
131	April 20, 2004	MJF-03G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 128)
132	April 21, 2004	D601/Mango	There is no field named D601 in the Jauca farm
133	April 21, 2004	ON-41P/Palms*	Ok
134	April 21, 2004	R104/Mango	There is no field named R104 in the Jauca farm
135	April 21, 2004	ON-41P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 133)
136	April 22, 2004	ON-42P/Palms*	Ok
137	April 22, 2004	JC-07P/Palms*	Ok
138	April 22, 2004	JC-07P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 137)
139	April 22, 2004	ON-42P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 136)
140	April 22, 2004	D501/Mango	There is no field named D501 in the Jauca farm
141	April 22, 2004	R101/Mango	There is no field named R101 in the Jauca farm
142	April 22, 2004	ON-42P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 136 and 139)
143	April 22, 2004	JC-07P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 137 and 138)
144	April 23, 2004	MJF-01G/Banana*	Ok
145	April 23, 2004	TX-54G/Banana*	Ok
146	April 23, 2004	TX-54G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 145)
147	April 23, 2004	MJF-01G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 144)
148	April 23, 2004	MJF-01G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 144 and 147)
149	April 23, 2004	TX-54G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 145 and 146)
150	April 26, 2004	OS-11/Mango	Ok
151	April 26, 2004	ON-52CLT/Citrus	Ok

57. Being an issue of law, an answer is not required.

58. As stated in paragraph 58 of the complaint, EPA's allegations are denied.

59. As stated in paragraph 59 of the complaint, EPA's allegations are denied.

**COUNTS 152-153**  
**FAILURE TO PROVIDE DECONTAMINATION SUPPLIES TO WORKERS**

60. It is admitted, subject to test of materiality and noted exceptions.

61. It is admitted.

62. Being an issue of law, an answer is not required.

63. As stated in paragraph 63 of the complaint, EPA's allegations are denied.

EPA has assumed that the main decontamination area and the central posting facility are at the same place, and/or that the same are at equal distance from JC-11. This is not the case since the two are different and separate sites. Furthermore, Respondent is aware that the inspector measured distances using a car odometer that moved on main roads.

64. The first sentence of paragraph 64 is admitted, the rest is denied. Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to location of supplies within  $\frac{1}{4}$  of a mile standard) was issued by EPA prior to the assessment of civil penalties under this complaint.

65. Being an issue of law, an answer is not required. Alternatively, it is denied.

66. Being an issue of law, an answer is not required.

67. It is admitted from this paragraph that during the visit of April 26, 2004, the inspector stated that there was no eye-flush container designed specifically for flushing eyes; the rest is denied. Respondent affirmatively alleges that eye-flush material was immediately purchased and made available to company personnel. Respondent further alleges that there was abundant water available, both at the main decontamination area and in the mixing area, and that no written warning for a



violation of FIFRA (as to eye-flush container designed specifically for flushing eyes) was issued by EPA prior to the assessment of civil penalties under this paragraph.

68. As stated in paragraph 68 of the complaint, EPA's allegations are denied.

**COUNTS 154-304**  
**FAILURE TO NOTIFY HANDLERS OF PESTICIDE APPLICATIONS**

69. It is admitted, subject to test of materiality and noted exceptions. Respondent affirmatively alleges that agricultural establishments are not required to duplicate their posting sites and state identical (WPS) information to workers and to handlers that share the same working environment. Since both regulatory requirements are for all practical purposes, identical --see 40 C.F.R. §§ 170.122; 170.135 (d)(2) and compare to 40 C.F.R §§ 170.222; 170.235 (d)(2) -- one adequately placed posting site for both categories of employees satisfies FIFRA's policies. Therefore, counts 154-304 are nothing more than a duplication of counts 1-151 and either group of proposed penalties should be dismissed at once.

70. As stated in paragraph 70 of the complaint, EPA's allegations are denied. Respondent affirmatively alleges that statements attributed to Mr. Alvaro Acosta have been taken out of context. His obligations do not include reporting pesticide applications nor the preparation and posting of WPS reports at the central information center. Respondent further alleges, as clearly stated to inspector, that all applications of pesticide (herbicides included) are indeed documented, which suggests that inspector confused issues since herbicides (vis-a-vis other pesticides) are applied, supervised, documented and reported by diverse company employees.



71. As stated in paragraph 71 of the complaint, EPA's allegations are denied. The Respondent gave to the PRDA-EPA Inspectors all the information they requested, being their duty to thoroughly review the data so that a well pleaded complaint could be submitted for adjudication.

The raw data given to the inspectors was erroneously reviewed and the EPA had to submit a "Motion for Leave to File First Amended Complaint" to amend the Complaint due to alleged "technical errors." Additionally, also resulting from the inspector's confusion and misrepresentation of data provided by the Respondent, the Complainant had to remove Application No. 10 from the tables presented in Paragraphs 56 and 71 of the Complaint (and the two counts associated therewith, as reflected in Paragraphs 59 and 74) because it had incorrectly identified Field JC-41 a mango field in which the pesticide "Clear Out 41 Plus" had been applied on March 29, 2004.

However, a considerable number of applications of the pesticide "Clear Out 41 Plus" on different dates --forty one to be precise-- have been erroneously kept by the EPA in the tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as the eighty two counts associated therewith reflected in Paragraphs 59 and 74, as follows: Twenty nine (29) applications of pesticides on fields that are not part of the Jauca facility; six (6) applications of pesticides along fences or property limits; three (3) applications of pesticides in workshops; and three (3) applications of pesticides in nurseries. PRDA-EPA personnel should again review the data provided by the Respondent updating the Complainant's Exhibit No. 21b, to remove the above

applications and all counts associated therewith as reflected in Paragraphs 59 and 74 of the Amended Complaint.

Also, over fifty (50) applications of the pesticide “Clear Out 41 Plus” have been duplicated and included in the same tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as their corresponding counts associated therewith reflected in Paragraphs 59 and 74. Consequently, all of EPA’s allegation included in this complaint are flawed, and the proposed civil penalties should be denied.

### APPLICATION TABLE

App #	Date of Application	Field Name/Crop	Comments
1	March 29, 2004	MJF-04G/Banana*	Ok
2	March 29, 2004	TX-52G/Banana*	Ok
3	March 29, 2004	MJF-04G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 1)
4	March 29, 2004	MJF-04G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 1 and 3)
5	March 29, 2004	TX-52G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 2)
6	March 29, 2004	TX-41	Ok (CORRECTED previously misidentified as JC-41/Mango)
7	March 29, 2004	TX-31/Mango	Ok
8	March 29, 2004	TX-32/Mango	Ok
9	March 29, 2004	TX-52G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 2 and 5)
10	March 30, 2004	ON-41P/Palms*	Ok
11	March 30, 2004	JC-41/Mango	Ok
12	March 30, 2004	ON-41P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 10)
13	March 30, 2004	JC-42/Mango	Ok
14	March 30, 2004	ON-41P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 10 and 12)
15	March 31, 2004	JC-22/Mango	Ok
16	March 31, 2004	D501/Mango	<b>There is no field named D501 in the Jauca farm</b>
17	March 31, 2004	JC-11/Mango	Ok
18	March 31, 2004	ON-42P/Palms*	Ok
19	March 31, 2004	ON-42P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 18)
20	March 31, 2004	ON-43P/Palms*	Ok
21	March 31, 2004	ON-43P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 20)
22	March 31, 2004	D601/Mango	<b>There is no field named D601 in the Jauca farm</b>
23	March 31, 2004	JC-21/Mango	Ok
24	April 1, 2004	D701/Mango	<b>There is no field named D701 in the Jauca farm</b>
25	April 1, 2004	JC-12P/Palms*	Ok
26	April 1, 2004	D601/Mango	<b>There is no field named D601 in the Jauca farm</b>

27	April 1, 2004	JC-12P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 25)
28	April 1, 2004	JC-12P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 25 and 27)
29	April 1, 2004	JC-23/Mango	?
30	April 1, 2004	JC-31/Mango	Ok
31	April 2, 2004	Invernadero/Omamental*	<b>This is not a fruit field, is a nursery</b>
32	April 2, 2004	Invernadero/Omamental*	<b>This is not a fruit field, is a nursery</b>
33	April 2, 2004	Verjas/Crop Not Listed	<b>This is not a fruit field, is a fence</b>
34	April 2, 2004	JC-11/Mango	Ok
35	April 2, 2004	Invernadero/Omamental*	<b>This is not a fruit field, is a nursery</b>
36	April 2, 2004	TX-54G/Banana*	Ok
37	April 2, 2004	TX-54G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 36)
38	April 2, 2004	Verjas/Crop Not Listed	<b>This is not a fruit field, is a fence</b>
39	April 2, 2004	Verjas/Crop Not Listed	<b>This is not a fruit field, is a fence</b>
40	April 2, 2004	JC-32/Mango	Ok
41	April 2, 2004	D401/Mango	<b>There is no field named D401 in the Jauca farm</b>
42	April 2, 2004	TX-54G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 36 and 37)
43	April 5, 2004	DSPR/Mango	<b>There is no field named DSPR in the Jauca farm</b>
44	April 5, 2004	TX-22/Mango	Ok
45	April 5, 2004	TX-32/Mango	Ok
46	April 5, 2004	TX-06P/Palms*	Ok
47	April 5, 2004	TX-06P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 46)
48	April 5, 2004	JC-06P/Palms*	Ok
49	April 5, 2004	TX-06P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 46 and 47)
50	April 5, 2004	JC-07P/Palms*	Ok
51	April 5, 2004	JC-07P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 50)
52	April 5, 2004	JC-07P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 50 and 51)
53	April 5, 2004	JC-06P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 48)
54	April 5, 2004	JC-06P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 48 and 53)
55	April 6, 2004	MJF-07P/Palms*	Ok
56	April 6, 2004	MJF-07P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 55)
57	April 6, 2004	MJF-07P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 55 and 56)
58	April 6, 2004	ON-11A/Avocado*	Ok
59	April 6, 2004	TX-41/Mango	?
60	April 6, 2004	ON-12C/Citrus	Ok
61	April 6, 2004	DSPR/Mango	<b>There is no field named DSPR in the Jauca farm</b>
62	April 6, 2004	Taller/Crop Not Listed	<b>This is not a fruit field, is a workshop</b>
63	April 6, 2004	Taller/Crop Not Listed	<b>This is not a fruit field, is a workshop</b>
64	April 6, 2004	Taller/Crop Not Listed	<b>This is not a fruit field, is a workshop</b>
65	April 7, 2004	R010/Mango	<b>There is no field named R010 in the Jauca farm</b>
66	April 7, 2004	D106/Mango	<b>There is no field named D106 in the Jauca farm</b>
67	April 7, 2004	DSPI or DSPR/Mango	<b>There is no field named DSPI or DSPR in the Jauca farm</b>
68	April 7, 2004	ON-71A/Avocado	Ok
69	April 7, 2004	ON-06A/Avocado	Ok
70	April 7, 2004	OS-33H/Plantains*	Ok
71	April 7, 2004	TX-53G/Banana	Ok



72	April 7, 2004	OS-17P/Palms*	Ok
73	April 7, 2004	OS-17P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 72)
74	April 7, 2004	ON-72A/Avocado	Ok
75	April 7, 2004	OS-33H/Plantains*	COUNT HAS BEEN DUPLICATED (SEE 70)
76	April 7, 2004	ON-82A/Avocado	Ok
77	April 7, 2004	TX-53G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 71)
78	April 7, 2004	R013/Mango	<b>There is no field named R013 in the Jauca farm</b>
79	April 7, 2004	R011/Mango	<b>There is no field named R011 in the Jauca farm</b>
80	April 7, 2004	DSPR/Mango	<b>There is no field named DSPR in the Jauca farm</b>
81	April 8, 2004	DSPR/Mango	<b>There is no field named DSPR in the Jauca farm</b>
82	April 12, 2004	ON-82A/Avocado	Ok
83	April 12, 2004	ON-21A/Avocado	Ok
84	April 12, 2004	ON-32A/Avocado	Ok
85	April 12, 2004	DSPR/Mango	<b>There is no field named DSPR in the Jauca farm</b>
86	April 13, 2004	ON-21A/Avocado	Ok
87	April 13, 2004	ON-31A/Avocado	Ok
88	April 13, 2004	ON-22A/Avocado	Ok
89	April 13, 2004	D001/Mango	<b>There is no field named D001 in the Jauca farm</b>
90	April 13, 2004	MJF-09P/Palms*	Ok
91	April 13, 2004	MJF09P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 90)
92	April 13, 2004	MJF09P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 90 and 91)
93	April 14, 2004	D001/Mango	<b>There is no field named D001 in the Jauca farm</b>
94	April 14, 2004	MJF-09P/Palms*	Ok
95	April 14, 2004	OS-25H/Plantains*	Ok
96	April 14, 2004	OS-25H/Plantains*	COUNT HAS BEEN DUPLICATED (SEE 95)
97	April 14, 2004	MJF-09P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 94)
98	April 14, 2004	R401/Mango	<b>There is no field named R401 in the Jauca farm</b>
99	April 14, 2004	OE-22G/Banana*	Ok
100	April 14, 2004	OE-22G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 99)
101	April 14, 2004	MJF-09P/Palms*	COUNT HAS BEEN DUPLICATED (SEE 94 and 97)
102	April 14, 2004	OE-22G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 99 and 100)
103	April 15, 2004	OE-22G/Banana*	Ok
104	April 15, 2004	OE-22G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 103)
105	April 15, 2004	Verjas/Crop Not Listed	<b>This is not a fruit field, is a fence</b>
106	April 15, 2004	Verjas/Crop Not Listed	<b>This is not a fruit field, is a fence</b>
107	April 15, 2004	OE-22G/Banana*	COUNT HAS BEEN DUPLICATED SEE 103 and 104)
108	April 15, 2004	D201/Mango	<b>There is no field named D201 in the Jauca farm</b>
109	April 15, 2004	R403/Mango	<b>There is no field named R403 in the Jauca farm</b>
110	April 15, 2004	Verjas/Crop Not Listed	<b>This is not a fruit field, is a fence</b>
111	April 16, 2004	OE-21G/Banana*	Ok
112	April 16, 2004	MJF-04G/Banana*	Ok
113	April 16, 2004	OE-21G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 111)
114	April 16, 2004	MJF-04G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 112)
115	April 16, 2004	OE-21G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 111 and 113)
116	April 16, 2004	MJF-04G/Banana*	COUNT HAS BEEN DUPLICATED (SEE 112 and 114)



75. It is admitted, subject to test of materiality and noted exceptions.

76. As stated in paragraph 76 of the complaint, EPA's allegations are denied.

77. As stated in paragraph 77 of the complaint, EPA's allegations are denied.

Respondent affirmatively alleges that decontamination supplies at the mixing site are kept inside a six inch PVC tube that is glued closed at one end, with a screwed-in cap at the other end. Running water for decontamination is abundantly available, and the PVC tube contains soap, single-use towels, a set of overalls and gloves.

78. Being an issue of law, an answer is not required. Alternatively, it is denied.

79. As stated in paragraph 79 of the complaint, EPA's allegations are denied.

Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to location of supplies within  $\frac{1}{4}$  of a mile standard) was issued by EPA prior to the assessment of civil penalties brought in instant complaint. It is further noted that this paragraph of the complaint is confusing in view of the fact that it refers to distances from ten individual fields located in the Jauca facility, measured (peripheral or in a straight line?) to the mixing site and to the decontamination facility (should it be the decontamination area?) It is also affirmatively alleged that Jauca Fields OS-11, OS-12, TX-21 and TX-23 are less than a  $\frac{1}{4}$  of a mile from the mixing site, and JC-31 is less than a  $\frac{1}{4}$  of a mile from the decontamination area.

80. Paragraph 80 is denied as to both alleged violations. Respondent affirmatively alleges that during the April 26, 2004, inspection, all other required decontamination supplies were available on the main decontamination area and in the mixing site. However, the inspector observed that it was also necessary to have clean towels on the main decontamination area, and that eyewash was missing in the mixing site.

Corrective actions were taken immediately, both were confirmed by the inspector during the follow up visit of April 29, 2004. Respondent further alleges that no written warning for a violation of FIFRA (as to lack of eyewash supplies standard) was issued by EPA prior to the assessment of civil penalties for the seventeen applications included in the next paragraph 81.

Also, see affirmative defense number 12: The agency has discretion to pursue different courses of action taking into account that no violations were reported following the March 24, 2003 PRDA-EPA inspection of the Jauca facility, and that there is no evidence that Respondent has caused harm to health or the environment. Section 14(a)(4) of FIFRA states that EPA may choose to issue a Notice of Violation in lieu of a civil penalty if the agency determines that the violation occurred despite the exercise of due care or the violation did not cause significant harm to health or the environment. Section 9(c)(3) also permits the EPA to issue a written Notice of Warning in lieu of instituting a proceeding for minor violations of FIFRA if the Administrator believes that the public interest will be adequately served through this course of action.

81. It is admitted. It is affirmatively alleged that PRDA-EPA personnel visited the Jauca facility early in the morning on April 26, 2004, and that there were no handlers applying pesticides at the time of the inspection.

82. Being an issue of law, an answer is not required.

83. As stated in paragraph 83 of the complaint, EPA's allegations are denied. It is affirmatively alleged that following the April 26, 2004 observations that it was necessary to have clean towels on the main decontamination area and that eyewash

was missing in the mixing site, corrective actions were taken immediately as confirmed during the follow up visit of April 29, 2004. Respondent further alleges that no written warning for a violation of FIFRA (as to lack of eyewash supplies and/or as to location of supplies within ¼ of a mile standards) were issued by EPA prior to the assessment of civil penalties brought in instant complaint.

84. As stated in paragraph 84 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Also, see answer to paragraph 81, above: "It is affirmatively alleged that PRDA-EPA personnel visited the Jauca facility early in the morning on April 26, 2004, and that there were no handlers applying pesticides at the time of the inspection."

85. Being an issue of law, an answer is not required.

86. As stated in paragraph 86 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80.

87. As stated in paragraph 87 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Also, see answer to paragraph 81, above: "It is affirmatively alleged that PRDA-EPA personnel visited the Jauca facility early in the morning on April 26, 2004, and that there were no handlers applying pesticides at the time of the inspection."

88. Being an issue of law, an answer is not required.



89. As stated in paragraph 89 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80.

90. As stated in paragraph 90 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Also, see answer to paragraph 81, above: It is affirmatively alleged that PRDA-EPA personnel visited the Jauca facility early in the morning on April 26, 2004, and that there were no handlers applying pesticides at the time of the inspection.

91. Being an issue of law, an answer is not required.

92. As stated in paragraph 92 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80.

93. As stated in paragraph 93 of the complaint, EPA's allegations are denied. It is affirmatively alleged that Respondent took immediate corrective actions as stated in paragraphs 83 and 80. Also, see answer to paragraph 81, above: It is affirmatively alleged that PRDA-EPA personnel visited the Jauca facility early in the morning on April 26, 2004, and that there were no handlers applying pesticides at the time of the inspection.

**COUNTS 322-334**  
**FAILURE TO PROVIDE PERSONAL PROTECTIVE EQUIPMENT TO**  
**HANDLERS**

94. It is admitted, subject to test of materiality and noted exceptions.

95. As stated in paragraph 95 of the complaint, EPA's allegations are denied.



Respondent affirmatively alleges that it did provide all of its handlers with the appropriate PPE. On April 26, 2004 Mr. Acosta informed the inspector that handlers received from their supervisor clean PPE on a daily basis, at the beginning of each working shift. Said PPE kept in the small warehouse located at the central office was shown to the inspectors. The inspectors were told that protective eyewear and respirator masks were kept in a locker next to the chemical warehouse and main decontamination area. As stated before, on that day the inspectors did not see the contents of that locker, but they did so on their follow-up visit of April 29, 2004. Mr. Acosta also told the inspector that normally the handlers kept their clean clothes in personal bags which were either left in the main decontamination area or in their private vehicles. It is further alleged that on the follow up visit of April 29, 2004, the inspector suggested to Respondent' agronomist to acquire more lockers so that handlers could safely store their PPE and clean clothes. Immediately, arrangements were made to acquire additional lockers, and said lockers shown to the inspector on the visit of July 20, 2004. Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to failure to provide PPE to its handlers or storage thereof standards) were issued by EPA prior to the assessment of civil penalties under this complaint.

96. As stated in paragraph 96 of the complaint, EPA's allegations are denied. Respondent affirmatively alleges that PPE was shown to inspector and additional lockers were purchased as alleged in paragraph 95, above.

97. It is admitted. It is affirmatively alleged that if handlers had been applying pesticides to mango, citrus, and banana fields at its Jauca facility, as claimed, they

109. It is admitted.

110. It is admitted.

111. Being an issue of law, an answer is not required. Respondent affirmatively alleges that no written warning for a violation of FIFRA (as to failure to provide showers, eye-flushing, etc...) were issued by EPA prior to the assessment of civil penalties under this complaint.

112. As stated in paragraph 112 of the complaint, EPA's allegations are denied. Respondent's records show that EPA's inspector did not visit C001 mango field on the date of the alleged violation.

113. As stated in paragraph 113 of the complaint, EPA's allegations are denied. See paragraph 112, above.

### **III. CIVIL PENALTIES**

114. As stated in paragraph 114 of the complaint, EPA's allegations are denied. Under section 14(a)(2) of FIFRA, a written warning for a violation of FIFRA must be issued to a private applicator prior to the assessment of a civil penalty. The record shows that no written warnings for violations of FIFRA as to (1) location of supplies within  $\frac{1}{4}$  of a mile of 'workers' and 'handlers'; (2) lack of eyewash supplies and/or eye-flush containers designed specifically for flushing eyes; and (3) failure to provide PPE to 'handlers' or to provide 'storage facilities' were issued by EPA against Respondent, prior to the assessment of civil penalties under this complaint.

The complaint is discriminatory and is intended to damage the reputation and well being of Respondent, a local agricultural enterprise. Said complaint is plagued with inaccuracies, erroneous factual allegations and the wrongful application of the law.

The proposed penalties are exaggerated, totally unreasonable, disproportionate and are not related whatsoever to the alleged FIFRA violations. Finally, EPA has abused its delegated powers by imposing double penalties for the same alleged violations. Agricultural establishments are not required to duplicate their posting sites and state identical (WPS) information to workers and to handlers that share the same working environment. Note that 40 C.F.R. §§ 170.122; 170.135 (d)(2) and 40 C.F.R. §§ 170.222; 170.235 (d)(2) are, for all practical purposes, identical. Therefore, one adequately placed posting site for both categories of employees satisfies FIFRA's policies. In addition, counts 154-304 are nothing more than a duplication of counts 1-151, and this pattern of duplication of alleged violations and penalties is repeated over and over thru all the complaint.

The Respondent gave to the PRDA-EPA Inspectors all the information they requested, being their duty to thoroughly review the data so that a well pleaded complaint could be submitted for adjudication. The raw data given to the inspectors was erroneously reviewed and the EPA had to submit a "Motion for Leave to File First Amended Complaint" to amend the Complaint due to alleged "technical errors." Additionally, also resulting from the inspector's confusion and misrepresentation of data provided by the Respondent, the Complainant had to remove Application No. 10 from the tables presented in Paragraphs 56 and 71 of the Complaint (and the two counts associated therewith, as reflected in Paragraphs 59 and 74) because it had

incorrectly identified Field JC-41 a mango field in which the pesticide “Clear Out 41 Plus” had been applied on March 29, 2004.

However, a considerable number of applications of the pesticide “Clear Out 41 Plus” on different dates --forty one to be precise-- have been erroneously kept by the EPA in the tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as the eighty two counts associated therewith reflected in Paragraphs 59 and 74, as follows: Twenty nine (29) applications of pesticides on fields that are not part of the Jauca facility; six (6) applications of pesticides along fences or property limits; three (3) applications of pesticides in workshops; and three (3) applications of pesticides in nurseries. PRDA-EPA personnel should again review the data provided by the Respondent updating the Complainant’s Exhibit No. 21b, to remove the above applications and all counts associated therewith as reflected in Paragraphs 59 and 74 of the Amended Complaint.

Also, over fifty (50) applications of the pesticide “Clear Out 41 Plus” have been duplicated and included in the same tables presented in Paragraphs 56 and 71 of the Amended Complaint, as well as their corresponding counts associated therewith reflected in Paragraphs 59 and 74. Consequently, all of EPA’s allegation included in this complaint are flawed, and the proposed civil penalties should be denied.

115. Respondent takes issue with EPA as to the facts that allegedly support the penalties imposed in this case.

116. No answer required.

117. No answer required.



#### **IV. OPPORTUNITY TO REQUEST A HEARING**

- 118. A hearing is hereby requested.
- 119. Requirement has been complied with.
- 120. Answer timely submitted.
- 121. A hearing is hereby requested.

#### **V. SETTLEMENT CONFERENCE**

- 122. A settlement conference with the Complainant is hereby requested.
- 123. A settlement conference with the Complainant is hereby requested.

#### **VI. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

- 124. Respondent not to engage in ex parte communications.

#### **VII. AFFIRMATIVE DEFENSES**

125. Respondent reserves the right to raise additional defenses upon completing discovery proceedings and hereby raises the following affirmative defenses:

- 1. The complaint fails to state a claim against Martex Farms, S.E.
- 2. Under section 14(a)(2) of FIFRA, a written warning for a violation of FIFRA must be issued to a private applicator prior to the assessment of a civil penalty.
- 3. The alleged FIFRA violations have not caused any harm to health or the environment.

is not intended to protect agricultural workers and/or agricultural handlers, but to cause undue hardship to Respondent.

12. The agency has discretion to pursue different courses of action taking into account that no violations were reported following the March 24, 2003 PRDA-EPA inspection of the Jauca facility, and that there is no evidence that Respondent has caused harm to health or the environment. Section 14(a)(4) of FIFRA states that EPA may choose to issue a Notice of Violation in lieu of a civil penalty if the agency determines that the violation occurred despite the exercise of due care or the violation did not cause significant harm to health or the environment. Section 9(c)(3) also permits the EPA to issue a written Notice of Warning in lieu of instituting a proceeding for minor violations of FIFRA if the Administrator believes that the public interest will be adequately served through this course of action.

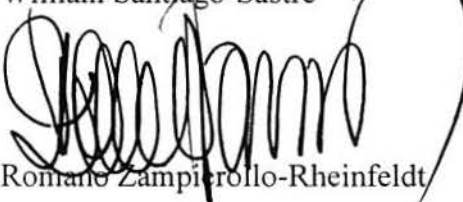
13. Complainant did not follow procedures. No attempts (in writing) were made by the PRDA-EPA Inspector or the Case Development Officer to document the size of the Respondent's business to determine its appropriate category.

14. Respondent reserves the right to raise additional affirmative defenses that may result from discovery proceedings.

RESPECTFULLY SUBMITTED. The original and one copy sent to Knolyn Jones, Hearing Clerk, US EPA, Office of Administrative Law Judges, 1099 14<sup>th</sup>. Street, N.W., Suite 350, Washington, DC 20005; one copy sent to the Hon. Susan L. Biro, US EPA, Office of Administrative Law Judges, 1099 14<sup>th</sup>. Street, N.W., Suite 350, Washington, DC 20005; AND one copy NOTIFIED to Ms. Danielle Fidler, Special

Litigation and Projects Division, Office of Regulatory Enforcement, US EPA, 1200  
Pennsylvania Ave. NW (MC-2248A), Washington, DC 20460.

In San Juan, Puerto Rico, this 2nd. day of August, 2005.

  
William Santiago-Sastre  
  
Romano Zampierolli-Rheinfeldt

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